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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of )  
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Federal-State Joint Board on Universal Service )  
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TRACFONE WIRELESS, INC. )  
 )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )  
In the State of New York )  
\_\_\_\_\_ )

CC Docket No. 96-45

**PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER  
IN THE STATE OF NEW YORK**

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## **EXHIBITS**

1. Declaration of TracFone President
2. Letter from New York Department of Public Service Declining Jurisdiction
3. High-Cost Interstate Access and Interstate Common Line Support Certification Letter

## SUMMARY

TracFone Wireless, Inc. (“TracFone”) is seeking designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Act”) throughout the entire State of New York, including both non-rural telephone company service areas and rural telephone company service areas.

TracFone is a reseller of Commercial Mobile Radio Services (“CMRS”) throughout New York. Through its resale agreements with five underlying carriers, TracFone has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Commission’s Rules, including Lifeline Service to qualifying customers, to any customer requesting this service within the designated service area.

Under Section 214(e)(6) of the Act, the Commission may with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the carrier meets the requirements of Section 214(e)(6). TracFone meets the requirements for ETC designation pursuant to Section 214(e)(6). TracFone recognizes that Section 214(e)(1)(A) states that ETCs shall offer services, at least in part, over their own facilities. Due to the fact that TracFone provides service by reselling the services of its underlying vendors, it is simultaneously requesting that the Commission exercise its forbearance authority with respect to the facilities-based requirement. TracFone meets all the conditions to grant a petition for forbearance. Enforcement of the requirement that an ETC provide service using at least a portion of its own facilities is not necessary to ensure that TracFone’s charges and practices are just and reasonable and are not unjustly or unreasonably discriminatory; is not necessary to protect consumers; and is consistent with the public interest. Unlike the situation that may exist when a carrier offers service by

reselling the services of incumbent local exchange carriers obtained at regulated “wholesale” rates in accordance with Sections 251(c)(4) and 252(d)(3) of the Act, the rates which TracFone is charged by its vendors are the product of market-driven arms-length negotiations. Thus, there is no universal service support built into those rates.

Finally, designation of TracFone as an ETC in rural telephone company service areas is supported by the public interest for various reasons. For example, consumers will benefit from the competitive choice that will be available, especially due to the fact that TracFone will provide valuable wireless service to rural communities. In addition, TracFone’s service offerings provide unique advantages. Specifically, TracFone provides affordable wireless telecommunications service to consumers to whom wireless service is otherwise unavailable or impracticable. TracFone offers pay-as-you-go service and none of the incumbent providers or the non-incumbent ETCs serving the areas covered by TracFone in New York offer service to consumers under comparable conditions.

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**PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER  
IN THE STATE OF NEW YORK**

TracFone Wireless, Inc. ("TracFone"), by its undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Communications Act"), hereby submits this Petition for Designation as an eligible telecommunications carrier ("ETC") in the State of New York. TracFone provides wireless telecommunications services throughout the State of New York. As demonstrated herein, and certified in Exhibit 1 to this Petition, TracFone meets all of the statutory and regulatory requirements for designation as an ETC in the State of New York. TracFone respectfully requests that the Commission promptly grant this Petition.

**I. TracFone's Universal Service Offering**

TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States, including the State of New York. TracFone provides service through a "virtual network" consisting of services obtained from more than thirty licensed operators of wireless

networks. TracFone has provided CMRS service throughout the State of New York continuously for seven years. In New York, TracFone obtains service from the following underlying carriers: AT&T Wireless; Cingular Wireless; Dobson Cellular; Rural Cellular Corporation; and Verizon Wireless. TracFone's arrangements with these providers enable it to offer services wherever any of those providers offer service in the State of New York.

TracFone, through its resale agreements with the underlying carriers identified in the preceding paragraph, has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Commission's Rules (47 C.F.R. § 54.101(a)) throughout New York. Upon designation as an ETC, TracFone will make available to consumers a universal service offering with all of the functionalities and features currently provided by TracFone to existing customers. TracFone will provide service pursuant to the universal service program, including Lifeline Service to qualifying customers, to any customer requesting this service within the designated service area.

Indeed, even without classification as an ETC, TracFone currently operates in accordance with the spirit of universal service. Because TracFone utilizes the networks of more than thirty licensed CMRS providers, TracFone service is available virtually nationwide (including throughout the State of New York). Moreover, TracFone service is available at nationally uniform rates. TracFone service is priced no higher in Plattsburgh (Clinton County), New York than it is in New York City. This is so despite the fact that TracFone's agreements with smaller, independent CMRS providers who serve rural areas, including, for example, Plattsburgh, NY, require TracFone to incur substantially higher costs to serve those areas. In fact, in some markets, TracFone's cost per minute of service in rural areas is higher than the nationally uniform rate it charges its customers in those areas.

## **II. TracFone Meets the Requirements For Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of New York.**

Under Section 214(e)(6) of the Act (47 U.S.C. § 214(e)(6)), the Commission, consistent with the public interest, convenience and necessity, may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of Section 214(e)(6). As demonstrated below, and as set forth in the Declaration of F.J. Pollak, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(6) set forth in the Commission's Section 214(e)(6) Public Notice, as demonstrated in this Petition.<sup>1</sup> In addition, TracFone complies with the standards established by the Commission for determining whether applications for ETC status to serve areas served by rural local exchange carriers would serve the public interest.<sup>2</sup> TracFone recognizes that Section 214(e)(1)(A) states that ETCs shall offer services, at least in part, over their own facilities. However, as described at Section II.B of this petition, TracFone is simultaneously requesting that the Commission exercise its forbearance authority with respect to that facilities-based service requirement. For the reasons set forth in its petition for forbearance, TracFone meets all of the conditions to grant of a petition for forbearance codified at Section 10 of the Act (47 U.S.C. § 160).

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<sup>1</sup> See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, *Public Notice*, 12 FCC Rcd 22947 (1997) ("Section 214(e)(6) Public Notice").

<sup>2</sup> See Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, FCC 03-338, released January 22, 2004 ("Virginia Cellular"); Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, FCC 04-37, released April 12, 2004 ("Highland Cellular").



**A. The New York Public Service Commission Does Not Regulate CMRS Service**

A carrier seeking designation as an ETC must typically request such a designation from the applicable state regulatory commission. However, the New York Public Service Commission (the "NYPSC") does not regulate CMRS carriers such as TracFone for the purpose of making ETC determinations. A letter to this effect dated March 18, 2004 has been provided by the NYPSC Office of General Counsel, and is attached to this Petition as Exhibit 2.<sup>3</sup> This letter meets the Commission's specific requirements for such letters, in that it specifies that CMRS carriers, in general, and TracFone in particular, are not subject to the State of New York Public Service Law, and that therefore TracFone is not subject to the jurisdiction of the New York Public Service Commission for the purpose of making Eligible Telecommunications Carrier designations. TracFone accordingly requests that the FCC designate TracFone as "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission" pursuant to 47 U.S.C. § 214(e)(6).

**B. TracFone Will Provide Service Through Resale**

Section 214(e)(1)(A) states that a carrier designated as an ETC shall offer services supported by Federal universal service support programs "either using its own facilities or a combination of its own facilities and resale of another carrier's services." TracFone is a reseller of the following carriers' services in New York: AT&T Wireless; Cingular Wireless; Dobson Cellular; Rural Cellular Corporation; and Verizon Wireless. Concurrent with the filing of this Petition, TracFone has filed with the Commission a Petition for Forbearance requesting that the Commission forbear from applying Section 214(e)(1)(A) to TracFone. As detailed in the Petition for Forbearance, in the case of TracFone, enforcement of the requirement that an ETC

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<sup>3</sup> Letter from Kathleen H. Burgess, Assistant Counsel, State of New York Public Service Commission, to Mitchell Brecher, dated March 18, 2004.

provide services using at least some of its own facilities is not necessary to ensure that TracFone's charges and practices are just and reasonable and are not unjustly or unreasonably discriminatory; is not necessary to protect consumers; and is consistent with the public interest.<sup>4</sup>

### **C. TracFone Offers All Required Services and Functionalities**

TracFone offers, or will offer upon designation as an ETC in the Designated Areas, all of the services and functionalities required by Section 54.101(a) of the Commission's Rules (47 C.F.R. § 54.101(a)) including the following:

#### **1. Voice grade access to the public switched telephone network.**

Voice grade access to the public switched telephone network ("PSTN") means the ability to make and receive traditional voice phone calls between the approximately 500 Hertz and 4,000 Hertz for a bandwidth of approximately 3500 Hertz.<sup>5</sup> The voice grade access provided by TracFone enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

#### **2. Local Usage.**

As part of the voice grade access to the PSTN, an ETC must provide local calling. TracFone provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is included in all of TracFone's calling plans. As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the Commission.

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<sup>4</sup> See 47 U.S.C. § 160.

<sup>5</sup> See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 at 8810-11 (1997) ("USF Order").

**3. Dual tone multi-frequency (“DTMF”) signaling or its functional equivalent.**

DTMF signaling allows carriers to provide expeditious call set-up and call detail information and enables modem usage.<sup>6</sup> The Commission permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets sold by TracFone are DTMF-capable.

**4. Single-party service or its functional equivalent.**

Single-party service means that only one party will be served by a subscriber line or access loop in contrast to a multi-party line.<sup>7</sup> TracFone provides customers with single-party access for the duration of every phone call. TracFone does not provide “multi-party” or “party line” services.

**5. Access to 911 and E911 emergency service.**

The Commission has declared that access to emergency services is essential.<sup>8</sup> TracFone provides universal access to the 911 system for its customers. TracFone has implemented and will continue to implement enhanced 911 (“E911”) services consistent with the Commission’s Rules and Orders when such services are made available by the carriers from whom TracFone purchases services. In particular, TracFone will fully comply with the Commission’s E911 requirements applicable to wireless resellers.<sup>9</sup> Pursuant to the Commission’s E911 Order, resellers that use other carriers’ facilities to provide wireless voice service to customers have an obligation to comply with the Commission’s E911 rules “to the extent that the underlying

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<sup>6</sup> USF Order at 8814.

<sup>7</sup> USF Order at 8810.

<sup>8</sup> Id. at 8815.

<sup>9</sup> See Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-290, 2003 WL 22844386 (released: Dec. 1, 2003) (“E911 Order”).

facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point].”<sup>10</sup> TracFone will make available access to E-911 service in accordance with applicable Commission requirements.

**6. Access to operator services.**

TracFone offers all of its customers access to operator services, in accordance with the Commission’s requirements.

**7. Access to interexchange service (“IXC”).**

TracFone customers can use TracFone’s services to complete toll calls. In fact, TracFone does not impose separate charges for interexchange calls. Long distance calling is included in TracFone’s service with no additional charge.

**8. Access to directory assistance.**

All TracFone customers receive access to directory assistance service through the TracFone virtual network. Specifically, all TracFone customers, including those customers located in New York, have access to directory assistance services provided by TracFone’s vendors.

**9. Toll limitation for qualified low-income customers.**

There is no need for TracFone to offer a toll limitation feature to qualifying low-income customers. Since TracFone’s service is a prepaid service, no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. TracFone treats long distance minutes as any other minutes and the customers are not charged separately for toll services. Inasmuch as all TracFone services are prepaid there is no danger that low income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for

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<sup>10</sup> Id. ¶ 91.

nonpayment. Since customers pay for the service in advance – they can use only what they already have paid for. Thus, TracFone's prepaid services are especially beneficial to lower income users since the consumers' enjoy the ability to control or limit their charges for toll service (as well as local service) in a manner that customers of traditional post-paid (billed in arrears services) do not.

#### **D. TracFone Will Advertise the Availability of Supported Services**

TracFone will advertise the availability of the above-described services and the charges therefor using media of general distribution, in accordance with the requirements of Section 54.201(d)(2) of the Commission's Rules (47 C.F.R. § 54.201(d)(2)). TracFone currently advertises the availability of its services, and will do so for each supported service on a regular basis, in newspapers, and magazines, or on radio and television, that constitute media of general distribution in Designated Areas of the State of New York. In addition, TracFone services are advertised through use of displays at the numerous retail outlets where TracFone service is sold.

#### **E. TracFone Requests Designation Throughout Its Licensed Service Area in New York**

TracFone is not a rural telephone company as defined in Section 153(37) of the Communications Act (47 U.S.C. § 153(37)). Accordingly, TracFone is required to describe the geographic area(s) within which it requests designation as an ETC. TracFone requests designation as an ETC for its entire service area in New York. TracFone, through its resale of wireless services provided by its underlying vendors in New York, provides service in every Zip Code in the State of New York. Accordingly, TracFone seeks ETC status throughout the entire State of New York.

##### **1. Non-Rural Areas**

For non-rural service areas, there are no restrictions on how a state commission defines

the “service area” for purposes of designating a competitive ETC. TracFone’s authorized service area covers the following non-rural telephone company service areas:

Citizens Communications Company of New York, Inc.  
Frontier Telephone of Rochester, Inc.  
Verizon New York, Inc.

The Commission may designate TracFone as an ETC in areas that TracFone serves without redefining the service areas of the non-rural telephone companies set forth above.

## **2. Rural Areas**

TracFone’s authorized service area covers the following rural telephone company service areas in their entirety:

Alltel New York, Inc.  
Armstrong Telephone Company - New York  
Berkshire Telephone Corp.  
Cassadaga Telephone Corp.  
Chautauqua & Erie Communications, Inc.  
Chazy & Westport Telephone Corp.  
Citizens Telecommunications Company  
Citizens Telephone Company of Hammond New York  
Crown Point Telephone Corp.  
Delhi Telephone Company  
Deposit Telephone Company, Inc.  
Dunkirk & Fredonia Telephone Company  
Edwards Telephone Company  
Empire Telephone Corporation  
Fishers Island Telephone Corp. (The)  
Frontier Communications of AuSable Valley  
Frontier Communications of New York, Inc.  
Frontier Communications of Seneca-Gorham  
Frontier Communications of Sylvan Lake  
Germantown Telephone Company, Inc.  
Hancock Telephone Company  
Margaretville Telephone Company, Inc.  
Newport Telephone Company, Inc.  
Nicholville Telephone Company, Inc.  
Ogden Telephone Company  
Oneida County Rural Telephone Company  
Ontario Telephone Company, Inc.  
Oriskany Falls Telephone Corp.

Pattersonville Telephone Company  
Port Byron Telephone  
State Telephone Company  
Taconic Telephone Corp.  
The Champlain Telephone Company  
The Middleburgh Telephone Company  
Trumansburg Telephone Company, Inc.  
Township Telephone Company  
Vernon Telephone Company  
Warwick Valley Telephone Company, Inc.

The Commission may designate TracFone as an ETC in these rural telephone company service areas upon a finding that such designation would serve the public interest.<sup>11</sup>

### **III. Designation of TracFone as an ETC for the Designated Areas In the State of New York Would Serve the Public Interest**

As noted above, TracFone seeks certification as an ETC in areas served by rural telephone companies, as well as in areas served by non-rural telephone companies. Consequently, the Communications Act requires that the Commission determine that TracFone's designation as an ETC would serve the public interest.<sup>12</sup>

The Commission has determined that "[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."<sup>13</sup> This is particularly applicable in the rural areas served by TracFone within the State of New York -- areas that in most cases are not presently served by competitive wireline carriers that could provide an alternative to the incumbent LECs. Designation of TracFone as an ETC will provide a valuable alternative to the existing telecommunications services available in these areas. Those public interest benefits include

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<sup>11</sup> See 47 C.F.R. § 54.207(c).

<sup>12</sup> 47 U.S.C. § 214(e)(6).

<sup>13</sup> See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, *Memorandum Opinion and Order*, CC Docket No. 96-45, 16 FCC Rcd 48, 55 (2000).

larger local calling areas, the convenience and security afforded by mobile telephony service, the opportunity for customers to control their costs by purchasing in advance only the volumes of service which they need and supplementing those quantities on an “as needed” basis, and, available E-911 service in accordance with the Commission’s E-911 requirements. In addition, TracFone’s inclusion of toll calling within its calling plans will enable consumers to avoid the risk of becoming burdened with large and unanticipated charges for toll calling.

In addition, designation of TracFone as an ETC will provide an incentive to the incumbent LECs in the designated rural areas to improve their existing networks to remain competitive, resulting in improved services to consumers. Designation of TracFone as an ETC in each case will also benefit consumers because support to services provided by TracFone will help assure that quality services are available at “just, reasonable, and affordable rates” as envisioned in the Communications Act.<sup>14</sup>

In its recent Highland Cellular decision, the Commission identified several factors to be considered in determining whether designation of an addition ETC in a rural area would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC in specific rural areas would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; 2) the impact of the designation on the universal service fund; 3) the unique advantages of the applicant company’s service offerings; 4) commitments made regarding the quality of services to be provided; and 5) the ETC applicant’s ability to satisfy its obligation to serve the designated areas within a reasonable time frame.<sup>15</sup> As described in the following paragraphs, TracFone meets each of those criteria.

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<sup>14</sup> See 47 U.S.C. § 254(b)(1).

<sup>15</sup> Highland Cellular at § 22.



### **1. The Benefits of Competitive Choice**

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the Commission for more than three decades.<sup>16</sup> However, the benefits of competitive choice are especially valuable in situations in which wireless providers like TracFone seek to provide service to rural communities. As the Commission recognized in Highland Cellular, some residences located in rural communities do not have access to the public switched network through the incumbent local exchange carrier. Moreover, the availability of a wireless competitive alternative benefits those rural consumers who often must drive significant distances to work, to schools, to stores, and to other community locations.<sup>17</sup> TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable service, both from their residences and when they are away from their homes.

### **2. Impact on the Universal Service Fund**

Whatever impact classification of TracFone as an ETC will have on the universal service fund will be negligible. As noted by the Commission in Highland Cellular, the total size of the fund as of fourth quarter 2003 was \$857,903.276. That same quarter competitive ETCs received approximately \$32 million or 3.7% of the available high cost support. TracFone does not anticipate that the amount of universal service funding which it might receive would be more than a *de minimis* portion of the fund size.

### **3. Unique Advantages of TracFone's Service Offerings**

As described elsewhere in this petition, TracFone's entire business model is predicated on providing easy to use, pay-as-you-go, affordable wireless telecommunications service to

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<sup>16</sup> See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

<sup>17</sup> Highland Cellular at § 23.

consumers to whom wireless service is otherwise unavailable or impracticable. TracFone offers consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, call forwarding, and long distance calling without toll charges. Because TracFone's service requires no term contracts, no minimum service periods or volume commitments, no credit checks, the service is available to everyone – irrespective of age; irrespective of residency; irrespective of creditworthiness. Moreover, TracFone's prepaid service is unique in that usage information and remaining balance information is stored in the handsets and is thus available to consumers on a "real-time" basis. None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in New York offer service to consumers under comparable conditions.

#### **4. Service Quality Commitments Made**

As a reseller of other carriers' wireless services, TracFone's service is of the same quality and reliability as that of its underlying vendors. TracFone cannot assure the Commission that it will never experience service disruptions. Occasional dropped calls and inconsistent coverage depending on atmospheric conditions are a fact of life in the wireless industry. TracFone believes that its service is as reliable as that of any other provider serving the New York market. To demonstrate its commitment to high service quality, TracFone will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service. In addition, it is willing to provide report to the Commission information regarding the number of consumer complaints per 1,000 handsets on an annual basis (the commitment made by Highland Cellular).

#### **5. TracFone Will be Able to Serve the Designated Areas Within a Reasonable Time**

TracFone provides service in New York by reselling service which it obtains from four

underlying facilities-based providers. Each of those providers' networks are operational and are largely built out. Thus, TracFone will be able to provide service to all locations served by any of those four underlying carriers immediately upon grant of this application.

Designation of TracFone as an ETC will also serve the public interest because TracFone will provide all of the supported services required by the Commission, will participate in the Lifeline and Link-Up programs as required by the Commission's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Communications Act are achieved. Allowing TracFone access to universal service support will enable TracFone to continue to enhance and expand its service to better serve consumers in underserved, high-cost areas of the State of New York. As a national leader in prepaid wireless services, TracFone has done much to advance the availability of wireless service for those portions of the population for whom wireless service is otherwise unavailable or, if available, is too costly and requires usage and volume commitments which are beyond the means of many consumers.

Finally, designation of TracFone as an ETC will serve the public interest by further promoting the extensive role TracFone plays in the provision of communications services to lower income and lower volume users, transient users, as well as other consumers who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers. TracFone's "pay-as-you-go" wireless plans enable consumers to enjoy the convenience and security of wireless telecommunication without being subject to extensive credit reviews and long-term service commitments which historically have limited the availability of wireless service to many Americans, including many New Yorkers. Accordingly, designation of TracFone as an ETC will

serve the public interest.

#### **IV. Anti-Drug Abuse Certification**

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.<sup>18</sup>

#### **V. High-Cost, Interstate Access, and Interstate Common Line Support Certification**

Under Sections 54.313, 54.314 and 54.904 of the Commission's Rules (47 C.F.R. §§ 54.313, 54.314 & 54.904), as well as 47 C.F.R. § 54.809, carriers wishing to obtain universal service support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the Commission and the Universal Service Administrative Company ("USAC") as to their compliance with Section 254(e) of the Communications Act (47 U.S.C. § 254(e)). As explained above, the NYPSC does not exercise jurisdiction over CMRS carriers such as TracFone. Therefore, TracFone has submitted its high-cost interstate access and interstate common line support certification letter with the Commission and with USAC. A copy of this certification is attached hereto as Exhibit 3. TracFone respectfully requests that the Commission issue a finding that TracFone has met the high-cost, interstate access and interstate common lines support certification requirement and that TracFone is, therefore, entitled to begin receiving such support where available, as of the date it receives a grant of ETC status in order that funding not be delayed.<sup>19</sup>

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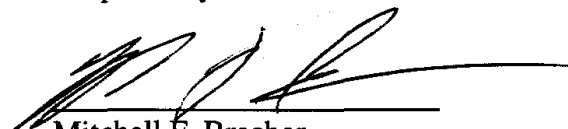
<sup>18</sup> See Declaration of F.J. Pollak, attached hereto as Exhibit 1.

<sup>19</sup> See Guam and Cellular Paging, Inc. Petition for Waiver of FCC Rule Section 54.314, Order, 18 FCC Rcd 7138 (2003).

## VI. Conclusion

Based on the foregoing, TracFone contends that the requirements for eligibility for designation as an eligible telecommunications carrier have been met. Therefore, TracFone requests that the Commission promptly grant this Petition.

Respectfully submitted,



Mitchell F. Brecher  
Debra McGuire Mercer

GREENBERG TRAURIG, LLP  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006  
(202) 331-3100

*Counsel for TracFone Wireless, Inc.*

June 8, 2004

//137663 v8

## **Exhibit 1**

## DECLARATION OF TRACFONE WIRELESS, INC.

F.J. Pollak, after first being sworn on oath, and pursuant to 47 C.F.R. § 1.16, states as follows:

1. I am President and Chief Executive Officer of TracFone Wireless, Inc. My business address is 8930 N.W. 25<sup>th</sup> Street, Miami, Florida 33122-1902

2. In my capacity as President and Chief Executive Officer of TracFone Wireless, Inc., I am an authorized representative of the Company. I have read TracFone's Petition for Designation as an Eligible Telecommunications Carrier In the State of New York (Petition) and confirm the information contained therein to be true and correct to the best of my present knowledge.

3. To the best of my knowledge, no party to the Petition, nor any of their officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) as specified in Section 1.2002(b) of the Commission's rules, are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

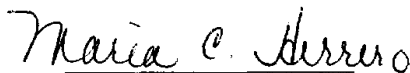
I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

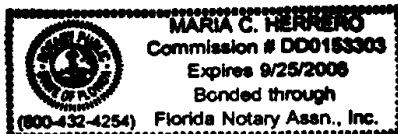
Executed on June 3, 2004.



F.J. Pollak  
President and Chief Executive Officer

Subscribed and sworn to before me  
This 3 day of June 2004.

  
Notary Public



## **Exhibit 2**



# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

## PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN

*Chairman*

THOMAS J. DUNLEAVY

JAMES D. BENNETT

LEONARD A. WEISS

NEAL N. GALVIN



DAWN JABLONSKI RYMAN

*General Counsel*

JACLYN A. BRILLING

*Secretary*

March 18, 2004

Mitchell Brecher  
Greenberg Taurig, LLP  
800 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20006

RE: Case 04-C-0227 - Petition of TracFone Wireless, Inc. for a Declaratory Ruling that the Company, a Commercial Mobile Radio Service Provider, is not subject to Commission Jurisdiction.

Dear Mr. Brecher,

I am responding to your letter to Secretary Brilling, dated February 23, 2004, on behalf of TracFone Wireless, Inc. ("TracFone"). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service (CMRS) providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 et seq. You indicated that TracFone is an authorized reseller of CMRS throughout the United States, including New York.

In response to your request, please be advised that the New York State Public Service Law §5 provides that:

Applications of the provisions of this chapter [the Public Service Law] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York State Public Service] commission . . . makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

March 18, 2004

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. *Consequently, based on the* representation by TracFone that it is a CMRS provider, TracFone would not be subject to the application of the Public Service Law and, therefore, the jurisdiction of the New York Public Service Commission for the purposes of making the Eligible Telecommunications Carrier designation.

As this letter is responsive to your request for a statement, Case 04-C-0227 will be closed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen H. Burgess".

Kathleen H. Burgess  
Assistant Counsel

### **Exhibit 3**



wireless, inc. 8390 NW 25th Street | Miami, FL 33122

June 7, 2004

**VIA OVERNIGHT MAIL**

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Ms. Irene M. Flannery  
Vice President – High Cost and Low Income Division  
Universal Service Administrative Company  
2000 L Street, NW  
Suite 200  
Washington, DC 20036

**RECEIVED**

**JUN - 7 2004**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: TracFone Wireless, Inc.  
Certification for High Cost Loop Support, CC Docket No. 96-45

Dear Ms. Dortch and Ms. Flannery:

This certification is submitted on behalf of TracFone Wireless, Inc. ("TracFone") in accordance with Federal Communications Rules 54.313 and 54.314 (47 C.F.R. §§ 54.313, 54.314). On behalf of TracFone, I hereby certify under penalty of perjury that all high-cost support provided to TracFone will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996 (47 U.S.C. § 254(e)).

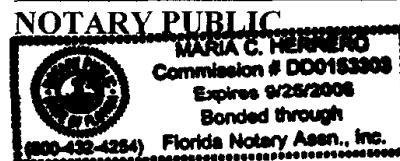
Sincerely,

TracFone Wireless, Inc.

F.J. Pollak  
President and Chief Executive Officer

**SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED** before me this 7 day of June, 2004.

*Maria C. Herrero*



My Commission Expires:

9-25-06